

JEFF BINGAMAN
NEW MEXICO

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United States Senate

July 6, 1994

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Dear Chairman Hundt:

I am aware of the letter sent to you on June 15, 1994 by several Members of Congress, addressing Section 19, the program access provision, of the Cable Act of 1992. I believe that letter fundamentally misstates the goal of Section 19, which was intended only to address exclusive practices by cable operators. Non-cable operations, such as direct broadcast satellite (DBS), are not covered by Section 19.

As the title of the Cable Act clearly indicates, that legislation specifically was designed to address the problems experienced by the public as a result of cable's practices.

A key provision of the Act is Section 19, which addresses cable programming practices. It precludes cable operators from entering into exclusive contracts with vertically integrated cable programmers in areas not served by cable. It permits exclusive contracts in areas served by cable if the FCC determines that such contracts are in the public interest. I submit, however, that a search of the entire Cable Act and its legislative history will confirm that only program contracts involving cable operators were intended to fall within the province of Section 19 and the Act as a whole.

Moreover, a fundamental purpose intended to be served by Section 19 is the promotion of technologies that can compete with cable operations. In this regard, competitive exclusivity in DBS operations is essential if a non-cable operator with a small number of channels is to be able to compete with another operator offering more, but different channels. Denying competitive exclusivity could have the perverse effect of creating a monopoly within DBS by limiting an operator's ability to grow, compete with cable, and offer unique services to the customer.

I believe the Commission's initial conclusions on programming exclusivity -- that Section 19 applies only to cable operators -- were correct, and that the rules adopted by the FCC thus properly

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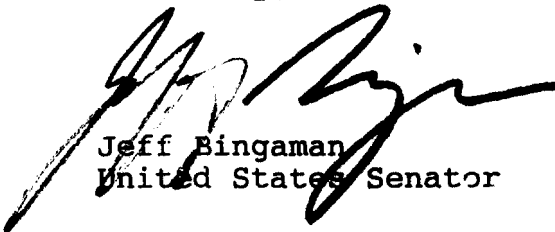
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implement Section 19. I understand the Attorneys General of 45 states and the District of Columbia, the U.S. Department of Justice, and Judge John Sprizzo, U.S. District Court, Southern District of New York, all agree that the Cable Act of 1992 does not prohibit exclusive contracts by DBS providers and programmers.

I appreciate your consideration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Bingaman", is written over the typed name and title.

Jeff Bingaman
United States Senator

JB/mss

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

OCT 24 1994

IN REPLY REFER TO:
CN 403250

The Honorable Jeff Bingaman
United States Senate
427 Dirksen Senate Office Building
Washington, DC 20510-3101

Dear Senator Bingaman:

The Chairman has asked me to respond to your letter concerning the Federal Communications Commission's *First Report and Order* implementing Section 19 of the Cable Television Consumer Protection and Competition Act of 1992.

Specifically, your letter requests that the Commission reaffirm its finding in the *First Report and Order* that Section 19 prohibits only exclusive contracts between vertically integrated cable programmers and cable operators in areas unserved by cable operators, and does not cover exclusive contracts with Direct Broadcast Satellite (DBS) providers. You state further that denying competitive exclusivity could create a monopoly within DBS by limiting a DBS operator's ability to grow, compete with cable, and offer unique services to the customer.

The issues you have raised, along with others, are pending reconsideration of the Commission's current program access rulemaking proceeding. As such, any discussion by Commission personnel concerning these issues outside the context of the rulemaking would be inappropriate. However, you may be assured that the Commission will take into account each of the arguments raised by you and your colleagues concerning these issues to arrive at a reasoned decision on reconsideration.

I trust that this response will prove both informative and helpful.

Sincerely,



Meredith J. Jones
Chief, Cable Services Bureau